



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Introduce Ordinance Repealing and Reenacting LMC §16.40.050 Establishing Subdivision Reimbursement Agreements for Construction

MEETING DATE: March 3, 2004

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council introduce an ordinance repealing and reenacting LMC §16.40.050 establishing subdivision reimbursement agreements for construction.

BACKGROUND INFORMATION: The requirements for mailing public hearing notifications have recently been examined by staff and the City Attorney. The question of whether the mailing was required by registered mail or regular mail was raised in the case of a recent high-volume mailing. A review of State law revealed that regular mail is satisfactory. Therefore, staff is recommending a change in the City's current code as described below.

Currently, the Lodi Municipal Code contains the following. (See Exhibit A for the entire section.)

16.40.050 Reimbursement agreement

- A. Within sixty days of receipt of a completed application, the public works director shall prepare a reimbursement agreement containing the following provisions:
 - 5. Prior to approval of the reimbursement agreement, the city council shall conduct a public hearing. The hearing shall be conducted within ninety days of receipt of the completed application. The applicant and property owner of each parcel identified in the reimbursement agreement shall be notified of the hearing by registered mail at least ten calendar days prior to the hearing.

Staff is recommending that Section A, subsection 5 be removed and a Section C be added to more clearly describe the public hearing process and to change the mailing requirement from registered to first class mail.

The text of the proposed ordinance is as follows:

16.40.050 Reimbursement agreement

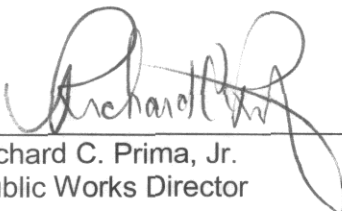
- C. Prior to the adoption of a resolution approving the reimbursement agreement, the city shall within ninety (90) days of receipt of a completed application conduct a public hearing as follows:

APPROVED:

H. Dixon Flynn, City Manager

1. At least ten (10) days prior to the date and time set for the hearing before the city council, give a notice by first class mail, postage prepaid, to the addresses as shown on the latest equalized assessment roll of San Joaquin County, to the owners of each parcel identified in the reimbursement agreement as benefited.
2. The notice shall state the date, time and location set for such hearing.
3. Include in such notice to property owners as required under (1) above a statement of the nature of the improvements constructed by the applicant, the actual costs of the improvements, the amount of the reimbursable costs as provided in Section A above, and list of the addresses or a map delineating all parcels identified in the reimbursement agreement as benefited.
4. The hearing on such reimbursement agreement shall take place before the city council, at which time all interested parties shall be heard. The council shall determine what properties are benefited, the costs and a fair method of allocation of costs to the properties benefited and an apportionment of such costs.

FUNDING: Not applicable.



Richard C. Prima, Jr.
Public Works Director

Prepared by Rebecca Areida, Management Analyst

RCP/RA/pmf

Attachment

cc: Stephen Schwabauer, Interim City Attorney
Wally Sandelin, City Engineer

Title 16 SUBDIVISIONS

Chapter 16.40 REIMBURSEMENTS FOR CONSTRUCTION

16.40.050 Reimbursement agreement.

A. Within sixty days of receipt of a completed application, the public works director shall prepare a reimbursement agreement containing the following provisions:

1. The amount of reimbursable costs shall include construction costs less any applicable credits plus ten percent for administrative and engineering costs. Applicable city engineering and processing fees shall also be added. Costs of financing, bonds or other applicant costs shall not be included.
2. The total reimbursable cost shall be apportioned to the benefitting properties as appropriate. Costs of transitions, utility stubs or other minor work shall not be apportioned to adjacent property.
3. The reimbursable amount shall be recalculated annually to include an amount attributable to interest, using the Engineering News Record 20 Cities Construction Cost Index as of the end of the year. The reimbursable amount for subsequent years shall be the prior year reimbursable amount less any reimbursements made during the year, all multiplied by the percentage change in the Index over the year.
4. The agreement shall provide that the city will collect the appropriate charge from the properties identified in the agreement and reimburse the applicant or the applicant's heirs, successors or assigns, for a period of fifteen years from the date of the agreement only. Reimbursement agreements to recover funds advanced by city for projects shall expire after fifteen years; reimbursement charges will not be collected after that time.
5. Prior to approval of the reimbursement agreement, the city council shall conduct a public hearing. The hearing shall be conducted within ninety days of receipt of the completed application. The applicant and property owner of each parcel identified in the reimbursement agreement shall be notified of the hearing by registered mail at least ten calendar days prior to the hearing.

B. The reimbursement agreement shall be numbered and filed by the public works director. (Ord. 1625 § 1, 1996; Ord. 1527 § 1 (part), 1991)

ORDINANCE NO. _____

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING LODI
MUNICIPAL CODE CHAPTER 16.40, BY REPEALING SECTION
16.40.050 A-5, AND ADDING SECTION C RELATING TO
REIMBURSEMENT AGREEMENTS

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 16.40 – Reimbursements for Construction is hereby amended by repealing Section 16.40.050 A-5 relative to Reimbursement Agreements.

Section 2. Lodi Municipal Code Section 16.40.050 – Reimbursement Agreement is hereby amended by adding subsection C as follows:

- C. Prior to the adoption of a resolution approving the reimbursement agreement the city shall within ninety (90) days of receipt of a completed application conduct a public hearing as follows:
 - 1. At least ten (10) days prior to the date and time set for the hearing before the city council, give a notice by first class mail, postage prepaid, to the addresses as shown on the latest equalized assessment roll of San Joaquin County, to the owners of each parcel identified in the reimbursement agreement as benefited.
 - 2. The notice shall state the date, time and location set for such hearing.
 - 3. Include in such notice to property owners as required under (1) above a statement of the nature of the improvements constructed by the applicant, the actual costs of the improvements, the amount of the reimbursable costs as provided in Section A above, and list of the addresses or a map delineating all parcels identified in the reimbursement agreement as benefited.
 - 4. The hearing on such reimbursement agreement shall take place before the city council, at which time all interested parties shall be heard. The council shall determine what properties are benefited, the costs and a fair method of allocation of costs to the properties benefited and an apportionment of such costs.

Section 3 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4 - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 5. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 6. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 2004

LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held March 3, 2004, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2004 by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
Interim City Attorney